

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ISAIAH GARONE,

Plaintiff,

v.

GLADYS MENCAS,

Defendant.

No. 2:22-cv-02310-DAD-CSK (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
DEFENDANTS' MOTION TO DISMISS IN
PART AND GRANTING DEFENDANTS'
MOTION TO DISMISS IN PART WITH
LEAVE TO AMEND

(Doc. Nos. 18, 25)

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 16, 2024, the assigned magistrate judge issued findings and recommendations recommending that defendant's motion to dismiss plaintiff's first amended complaint (Doc. No. 18) be granted in part and denied in part and that plaintiff be granted leave to file a second amended complaint to attempt to cure any noted pleading deficiencies if he so desired. (Doc. No. 25.) Specifically, the magistrate judge found that plaintiff had failed to allege sufficient facts in support of his inadequate medical care claim with respect to the treatment provided for his right knee condition but had sufficiently alleged facts in support of his second claim with respect to the treatment provided for his nose condition. (*Id.* at 8–10.)

1 The pending findings and recommendations were served on the parties and contained
2 notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at
3 14.) To date, no objections to the findings and recommendations have been filed, and the time in
4 which to do so has now passed.

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
6 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
7 findings and recommendations are supported by the record and by proper analysis.

8 Accordingly:

- 9 1. The findings and recommendations (Doc. No. 25) are adopted in full;
- 10 2. Defendant's motion to dismiss (Doc. No. 18) is granted as to plaintiff's first claim
11 related to the medical care provided for his right knee condition and denied as to
12 plaintiff's second claim relating to the medical care provided for treatment of his nose
13 condition;
- 14 3. Plaintiff is granted leave to file a second amended complaint, unless he chooses to
15 stand on his first amended complaint and pursue claims against defendant based solely
16 upon his allegation that she interfered with plaintiff's medical treatment by cancelling
17 his appointments with outside specialists;
- 18 4. Within thirty (30) days of the service of this order, plaintiff shall file the appended
19 Notice of Election form. If plaintiff opts to file a second amended complaint, the
20 election form should be accompanied by plaintiff's proposed second amended
21 complaint. Defendant is relieved of the obligation to respond to plaintiff's first
22 amended complaint pending further order of court;
- 23 5. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights
24 complaint by a prisoner, as well as a copy of his first amended complaint (Doc. No. 8);
25 and

26 /////

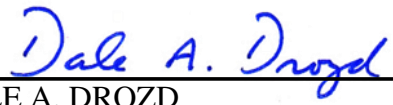
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1 6. This matter is referred back to the assigned magistrate judge for further proceedings
2 consistent with this order.

3 IT IS SO ORDERED.

4 Dated: **January 30, 2025**



DALE A. DROZD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ISAIAH GARONE,

Plaintiff,

v.

GLADYS MENCAS,

Defendant.

No. 2:22-cv-2310 CSK P

NOTICE OF ELECTION

After the district judge addressed the findings and recommendations concerning defendant's motion to dismiss (ECF No. 18), plaintiff elects to proceed as follows. (Plaintiff should choose only one of the options below.)

1. _____ Plaintiff opts to stand on his first amended complaint ("FAC") raising Fourteenth Amendment claims against defendant Gladys Mencias based on her alleged interference with medical care for plaintiff's nose, and consents to dismissal of plaintiff's Fourteenth Amendment claim against defendant Mencias based on medical treatment for plaintiff's right knee without prejudice.

OR

2. _____ Plaintiff opts to file a second amended complaint adding additional facts in an attempt to state a cognizable Fourteenth Amendment claim against defendant Mencias concerning medical care for plaintiff's right knee.

(If plaintiff chooses option two, plaintiff must file his proposed second amended complaint along with this completed Notice of Election form. Plaintiff is reminded to include from the FAC his second claim alleging defendant's interference with plaintiff's ability to see an outside specialist for treatment for plaintiff's nose.)

DATED: _____

Plaintiff